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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/570,124	10/18/2006	Ewald Pickhard	1717347	7411
24240 7590 12/01/2008 CHAPMAN AND CUTLER 111 WEST MONROE STREET CHICAGO, IL 60603				
EXAMINER PATEL, PRITESH ASHOK				
ART UNIT 4158		PAPER NUMBER		
MAIL DATE 12/01/2008		DELIVERY MODE PAPER		

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

### Office Action Summary

**Application No.**

10/570,124

**Applicant(s)**

PICKHARD, EWALD

**Examiner**

PRITESH PATEL

**Art Unit**

4158

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 28 February 2006.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-20 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-20 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☒ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO/SF/ICE)  
Paper No(s)/Mail Date 10/16/2006
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: \_\_\_\_\_

## DETAILED ACTION

### ***Claim Rejections - 35 USC § 103***

1. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

2. The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
  2. Ascertaining the differences between the prior art and the claims at issue.
  3. Resolving the level of ordinary skill in the pertinent art.
  4. Considering objective evidence present in the application indicating obviousness or nonobviousness.
3. Claims 1-9 and 15-20 are rejected under 35 U.S.C. 103(a) as being unpatentable over Pickhard (WO 01/07104 A1) in view of van der Wal (US 5273544) in further view of Curie et al. (US 5378240).

Concerning claim 1, Pickhard discloses a device for automatically injecting injection liquids comprising an axially divided housing comprising a first housing part (13) having an axially displaceable pressure pin (14) which is capable of being inserted into force accumulator (15) and locked in the inserted position and extended upon relief of the force accumulator; an injection needle (4) fixed in needle guide (5) and an ampoule (3) are mounted in a second housing part (1) so as to be axially displaceable relative to each other, wherein the needle guide has a perforation part (23) designed to

perforate the ampoule (Figs 2 and 4 and abstract). Pickhard does not disclose a sleeve in which the ampoule is mounted, radially inward projections on the inner periphery of the sleeve, and locking members cooperative on the sleeve and needle guide. Van der Wal discloses a sleeve (12) and radially inward projections (21) on the inner periphery of the sleeve (column 4, lines 1-17). It would have been obvious to one of ordinary skill at the time of the invention to modify Pickhard with radially inward projections to secure the ampoule prior to deployment as taught by van der Wal to prevent piercing of the ampoule before use was required by providing a barrier of resistance. It would further have been obvious to modify the needle guide to allow the needle to protrude slightly on the ampoule side to allow piercing of the ampoule instead of making the ampoule Pickhard in view of van der Wal lacks locking members. Curie et al. discloses snap-lock locking members on an interior wall coinciding with snap locking members on a needle guide (column 2, lines 20-26). It would have been obvious to modify Pickhard in view of van der Wal with locking members on the sleeve coupled with locking members on the ampoule as taught by Curie et al. It would have further been obvious that the interior of a barrel form Curie et al. would be modified to the sleeve (12) of Pickard in view of van der Wal as described in van der Wal.

Concerning claim 2, Pickhard in view of van der Wal does not disclose arms capable of moving outwardly in a resilient manner, said arms carrying protruding projections cooperating with the ampoule under the movement of arms and release of locking members. Curie et al. discloses arms (54 and 56) with projections in cooperation with snap lock locking members (column 5, lines 20-30). It would have been obvious to

one of ordinary skill in the art at the time of the invention to modify Pickard in view of van der Wal with arms as taught by Curie et al. to facilitate security of the ampoule before use and to guide ampoule properly.

Concerning claim 3, Pickhard in view of van der Wal in further view of Curie et al. discloses a sleeve and a needle guide and radially inward protrusions in said sleeve and a cooperation of locking mechanisms as discussed above. It would have been obvious to one of ordinary skill in the art at the time of the invention to modify the second housing part with inward projections to prevent the sleeve from moving the ampoule down before the device was ready to use.

Concerning claim 4, Pickhard in view of van der Wal in further view of Curie et al. discloses locking members that are snap-in noses. It would have been obvious to one of ordinary skill in the art at the time of the invention that the snap-in nose locking members would be engaging in reception openings.

Concerning claim 5 and 6, Pickhard discloses a one piece spring element (7) that serves as a motion dampener and spring basket (Fig 2). It would have been obvious to one of ordinary skill in the art at the time of the invention to modify the invention as disclosed above with a spring element as taught by Pickhard to serve as an axially compressible motion dampener in between the ampoule and needle guide to avoid the ampoule hitting the needle guide.

Concerning claims 7 and 8, Pickhard in view of van der Wal in further view of Curie et al. discloses a needle guide securing a needle, said needle having a perforation end facing the ampoule. It would have been obvious to one of ordinary skill

that the needle guide would have a structure providing a closed annular space around the needle, an annular web, and that the perforation end of the needle would have a radial opening to accept the substance in the ampoule.

Concerning claim 9, Pickhard in view of van der Wal in further view of Curie et al. discloses a radially inward projections in a sleeve. It would have been obvious to one of ordinary skill in the art at the time of the invention to use said sleeve in conjunction with a sleeve-shaped ampoule socket where the ampoule would be loaded and where said sleeve-shaped ampoule socket had radially inward projections and helped to further secure the ampoule. It would further have been obvious to one of ordinary skill in the art at the time of the invention that the radially inward projections could be lamellar guide ribs extending longitudinally along said sleeve-shaped ampoule socket.

Concerning claims 15-20, the above disclosure reaches the limitations of these claims.

4. Claim 10 is rejected under 35 U.S.C. 103(a) as being unpatentable over Pickhard in view of van der Wal in further view of Curie et al. in further view of Vanderbeck (US 3485239).

Concerning claim 10, Vanderbeck discloses the use of gas permeable caps to cover a hypodermic syringe (Abstract). It would have been obvious to one of ordinary skill in the art at the time of the invention to use a gas permeable foil on the end of a injection device as taught by Vanderbeck to seal the device for sterilization conditions.

5. Claims 11-14 are rejected under 35 U.S.C. 103(a) as being unpatentable over Pickhard in view of van der Wal in further view of Curie et al. in further view of Botich et

al. (US 5788677).

Concerning claims 11-14, Botich et al. discloses the use of seals around an ampoule (column 3 lines 38-42 and 65-67, column 4 lines 4, 5, 15, and 16). It would have been obvious to one of ordinary skill in the art at the time of the invention to use a seal around the ampoule and in the housing part as taught by Botich et al. to secure leakage of a substance. It would further have been obvious to one of ordinary skill in the art at the time of the invention to use an O-ring seal or labyrinth seal in the invention.

#### ***Conclusion***

Any inquiry concerning this communication or earlier communications from the examiner should be directed to PRITESH PATEL whose telephone number is (571)270-7025. The examiner can normally be reached on Monday-Friday 7:30Am-5:00PM, every other Friday off.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Gary Jackson can be reached on (571)272-4697. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/P. P./  
Examiner, Art Unit 4158  
11/21/2008

/Gary Jackson/  
Supervisory Patent Examiner  
Art Unit 4158